

**96TH GENERAL ASSEMBLY****State of Illinois****2009 and 2010****SB0188**

Introduced 2/3/2009, by

SYNOPSIS AS INTRODUCED:760 ILCS 5/5.3
760 ILCS 5/16.1

Amends the Trusts and Trustees Act. Provides that a trust may be converted to a total return trust by an agreement of the trustee and all primary beneficiaries or all beneficiaries receiving income or principal and presumptive trust remaindermen (instead of all primary beneficiaries under the applicable virtual representation provisions of the Act). Provides that if there is no conflict of interest, a represented person, including a primary beneficiary or presumptive remainder beneficiary, and a minor, disabled, or unborn or unknown persons may be represented and bound by a party with a substantially identical interest. Provides that a total return trust conversion may be made between the trustee and all primary beneficiaries or other beneficiaries and presumptive remaindermen. Provides that a trust that provides a beneficial interest to a charity or charitable purpose not specifically named in the trust shall be known as a charitable interest and the Attorney General may represent and act on behalf of the charitable interest as to any dispute, including a nonjudicial settlement or a total return trust conversion. Provides that a nonjudicial settlement agreement between a trustee and all interested parties whose consent or joinder would be required for court approval is valid as to the matters of a trustee's appointment, compensation, liability, or indemnification (instead of if all primary beneficiaries of a trust are adults any written agreement, other than a trust termination agreement, construing trust provisions regarding the trustee, between a trustee and all of the primary beneficiaries of a trust shall be final and binding on the trustee and all beneficiaries of the trust, both current and future, as if ordered by a court). These provisions apply to all existing and future trusts, court proceedings, and agreements entered into under this Section on or after the effective date (instead of these provisions apply to all existing and future trusts, but only as to agreements made on or after the effective date). Includes other provisions.

LRB096 04547 AJO 14602 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Trusts and Trustees Act is amended by
5 changing Sections 5.3 and 16.1 as follows:

6 (760 ILCS 5/5.3)

7 Sec. 5.3. Total return trusts.

8 (a) Conversion by trustee. A trustee may convert a trust to
9 a total return trust as described in this Section if all of the
10 following apply:

11 (1) The trust describes the amount that may or must be
12 distributed to a beneficiary by referring to the trust's
13 income, and the trustee determines that conversion to a
14 total return trust will enable the trustee to better carry
15 out the purposes of the trust and the conversion is in the
16 best interests of the beneficiaries;

17 (2) conversion to a total return trust means the
18 trustee will invest and manage trust assets seeking a total
19 return without regard to whether that return is from income
20 or appreciation of principal, and will make distributions
21 in accordance with this Section (such a trust is called a
22 "total return trust" in this Section);

23 (3) the trustee sends a written notice of the trustee's

1 decision to convert the trust to a total return trust,
2 specifying a prospective effective date for the conversion
3 and including a copy of this Section, to the following
4 beneficiaries, determined as of the date the notice is sent
5 and assuming nonexercise of all powers of appointment:

6 (A) all of the legally competent beneficiaries who
7 are currently receiving or eligible to receive income
8 from the trust; and

9 (B) all of the legally competent beneficiaries who
10 would receive or be eligible to receive a distribution
11 of principal or income if the current interests of
12 beneficiaries currently receiving or eligible to
13 receive income ended;

14 (4) there are one or more legally competent income
15 beneficiaries under subdivision (3) (A) of this subsection
16 (a) and one or more legally competent remainder
17 beneficiaries under subdivision (3) (B) of this subsection
18 (a), determined as of the date of sending the notice;

19 (5) no beneficiary objects to the conversion to a total
20 return trust in a writing delivered to the trustee within
21 60 days after the notice is sent; and

22 (6) the trustee has signed acknowledgments of receipt
23 confirming that notice was received by each beneficiary
24 required to be sent notice under subdivision (3) of this
25 subsection (a).

26 (b) Conversion by agreement. Conversion to a total return

1 trust may be made by agreement between a trustee and (i) all
2 primary beneficiaries, either individually or by their
3 respective representatives in accordance with subsection
4 16.1(a)(2) of this Act, or (ii) all beneficiaries currently
5 eligible to receive income or principal from the trust and all
6 beneficiaries who are presumptive remaindermen, either
7 individually or by their respective representatives in
8 accordance with subsection 16.1(a)(3) of this Act ~~all the~~
9 ~~primary beneficiaries of the trust under the virtual~~
10 ~~representation provisions of Section 16.1 of this Act if those~~
11 ~~provisions otherwise apply.~~ The agreement may include any
12 actions a court could properly order under subsection (g) of
13 this Section; however, any distribution percentage determined
14 by the agreement may not be less than 3% nor greater than 5%.

15 (c) Conversion or reconversion by court.

16 (1) The trustee may for any reason elect to petition
17 the court to order conversion to a total return trust,
18 including without limitation the reason that conversion
19 under subsection (a) is unavailable because:

20 (A) a beneficiary timely objects to the conversion
21 to a total return trust;

22 (B) there are no legally competent beneficiaries
23 described in subdivision (3)(A) of subsection (a); or

24 (C) there are no legally competent beneficiaries
25 described in subdivision (3)(B) of subsection (a).

26 (2) A beneficiary may request the trustee to convert to

1 a total return trust or adjust the distribution percentage.
2 If the trustee declines or fails to act within 6 months
3 after receiving a written request to do so, the beneficiary
4 may petition the court to order the conversion or
5 adjustment.

6 (3) The trustee may petition the court prospectively to
7 reconvert from a total return trust or adjust the
8 distribution percentage if the trustee determines that the
9 reconversion or adjustment will enable the trustee to
10 better carry out the purposes of the trust. A beneficiary
11 may request the trustee to petition the court prospectively
12 to reconvert from a total return trust or adjust the
13 distribution percentage. If the trustee declines or fails
14 to act within 6 months after receiving a written request to
15 do so, the beneficiary may petition the court to order the
16 reconversion or adjustment.

17 (4) In a judicial proceeding under this subsection (c),
18 the trustee may, but need not, present the trustee's
19 opinions and reasons (A) for supporting or opposing
20 conversion to (or reconversion from or adjustment of the
21 distribution percentage of) a total return trust,
22 including whether the trustee believes conversion (or
23 reconversion or adjustment of the distribution percentage)
24 would enable the trustee to better carry out the purposes
25 of the trust, and (B) about any other matters relevant to
26 the proposed conversion (or reconversion or adjustment of

1 the distribution percentage). A trustee's actions in
2 accordance with this subsection (c) shall not be deemed
3 improper or inconsistent with the trustee's duty of
4 impartiality unless the court finds from all the evidence
5 that the trustee acted in bad faith.

6 (5) The court shall order conversion to (or
7 reconversion prospectively from or adjustment of the
8 distribution percentage of) a total return trust if the
9 court determines that the conversion (or reconversion or
10 adjustment of the distribution percentage) will enable the
11 trustee to better carry out the purposes of the trust and
12 the conversion (or reconversion or adjustment of the
13 distribution percentage) is in the best interests of the
14 beneficiaries.

15 (6) Notwithstanding any other provision of this
16 Section, a trustee has no duty to inform beneficiaries
17 about the availability of this Section and has no duty to
18 review the trust to determine whether any action should be
19 taken under this Section unless requested to do so in
20 writing by a beneficiary described in subdivision (3) of
21 subsection (a).

22 (d) Post conversion. While a trust is a total return trust,
23 all of the following shall apply to the trust:

24 (1) the trustee shall make income distributions in
25 accordance with the governing instrument subject to the
26 provisions of this Section;

1 (2) the term "income" in the governing instrument means
2 an annual amount (the "distribution amount") equal to a
3 percentage (the "distribution percentage") of the net fair
4 market value of the trust's assets, whether the assets are
5 considered income or principal under the Principal and
6 Income Act, averaged over the lesser of:

7 (i) the 3 preceding years; or

8 (ii) the period during which the trust has been in
9 existence;

10 (3) the distribution percentage for any trust
11 converted to a total return trust by a trustee in
12 accordance with subsection (a) shall be 4%;

13 (4) the trustee shall pay to a beneficiary (in the case
14 of an underpayment) and shall recover from a beneficiary
15 (in the case of an overpayment) an amount equal to the
16 difference between the amount properly payable and the
17 amount actually paid, plus interest compounded annually at
18 a rate per annum equal to the distribution percentage in
19 the year or years while the underpayment or overpayment
20 exists; and

21 (5) a change in the method of determining a reasonable
22 current return by converting to a total return trust in
23 accordance with this Section and substituting the
24 distribution amount for net trust accounting income is a
25 proper change in the definition of trust income
26 notwithstanding any contrary provision of the Principal

1 and Income Act, and the distribution amount shall be deemed
2 a reasonable current return that fairly apportions the
3 total return of a total return trust.

4 (e) Administration. The trustee, in the trustee's
5 discretion, may determine any of the following matters in
6 administering a total return trust as the trustee from time to
7 time determines necessary or helpful for the proper functioning
8 of the trust:

9 (1) the effective date of a conversion to a total
10 return trust;

11 (2) the manner of prorating the distribution amount for
12 a short year in which a beneficiary's interest commences or
13 ceases;

14 (3) whether distributions are made in cash or in kind;

15 (4) the manner of adjusting valuations and
16 calculations of the distribution amount to account for
17 other payments from or contributions to the trust;

18 (5) whether to value the trust's assets annually or
19 more frequently;

20 (6) what valuation dates and how many valuation dates
21 to use;

22 (7) valuation decisions about any asset for which there
23 is no readily available market value, including:

24 (A) how frequently to value such an asset;

25 (B) whether and how often to engage a professional
26 appraiser to value such an asset; and

1 (C) whether to exclude the value of such an asset
2 from the net fair market value of the trust's assets
3 under subdivision (d)(2) for purposes of determining
4 the distribution amount. Any such asset so excluded is
5 referred to as an "excluded asset" in this subsection
6 (e), and the trustee shall distribute any net income
7 received from the excluded asset as provided for in the
8 governing instrument, subject to the following
9 principles:

10 (i) unless the trustee determines there are
11 compelling reasons to the contrary considering all
12 relevant factors including the best interests of
13 the beneficiaries, the trustee shall treat each
14 asset for which there is no readily available
15 market value as an excluded asset;

16 (ii) if tangible personal property or real
17 property is possessed or occupied by a
18 beneficiary, the trustee shall not limit or
19 restrict any right of the beneficiary to use the
20 property in accordance with the governing
21 instrument whether or not the trustee treats the
22 property as an excluded asset;

23 (iii) examples of assets for which there is a
24 readily available market value include: cash and
25 cash equivalents; stocks, bonds, and other
26 securities and instruments for which there is an

1 established market on a stock exchange, in an
2 over-the-counter market, or otherwise; and any
3 other property that can reasonably be expected to
4 be sold within one week of the decision to sell
5 without extraordinary efforts by the seller;

6 (iv) examples of assets for which there is no
7 readily available market value include: stocks,
8 bonds, and other securities and instruments for
9 which there is no established market on a stock
10 exchange, in an over-the-counter market, or
11 otherwise; real property; tangible personal
12 property; and artwork and other collectibles; and

13 (8) any other administrative matters as the trustee
14 determines necessary or helpful for the proper functioning
15 of the total return trust.

16 (f) Allocations.

17 (1) Expenses, taxes, and other charges that would be
18 deducted from income if the trust were not a total return
19 trust shall not be deducted from the distribution amount.

20 (2) Unless otherwise provided by the governing
21 instrument, the trustee shall fund the distribution amount
22 each year from the following sources for that year in the
23 order listed: first from net income (as the term would be
24 determined if the trust were not a total return trust),
25 then from other ordinary income as determined for federal
26 income tax purposes, then from net realized short-term

1 capital gains as determined for federal income tax
2 purposes, then from net realized long-term capital gains as
3 determined for federal income tax purposes, then from trust
4 principal comprised of assets for which there is a readily
5 available market value, and then from other trust
6 principal.

7 (g) Court orders. The court may order any of the following
8 actions in a proceeding brought by a trustee or a beneficiary
9 in accordance with subdivision (c) (1), (c) (2), or (c) (3):

10 (1) select a distribution percentage other than 4%;

11 (2) average the valuation of the trust's net assets
12 over a period other than 3 years;

13 (3) reconvert prospectively from or adjust the
14 distribution percentage of a total return trust;

15 (4) direct the distribution of net income (determined
16 as if the trust were not a total return trust) in excess of
17 the distribution amount as to any or all trust assets if
18 the distribution is necessary to preserve a tax benefit; or

19 (5) change or direct any administrative procedure as
20 the court determines necessary or helpful for the proper
21 functioning of the total return trust.

22 Nothing in this subsection (g) limits the equitable powers
23 of the court to grant other relief.

24 (h) Restrictions. Conversion to a total return trust does
25 not affect any provision in the governing instrument:

26 (1) directing or authorizing the trustee to distribute

1 principal;

2 (2) directing or authorizing the trustee to distribute
3 a fixed annuity or a fixed fraction of the value of trust
4 assets;

5 (3) authorizing a beneficiary to withdraw a portion or
6 all of the principal; or

7 (4) in any manner that would diminish an amount
8 permanently set aside for charitable purposes under the
9 governing instrument unless both income and principal are
10 so set aside.

11 (i) Tax limitations. If a particular trustee is a
12 beneficiary of the trust and conversion or failure to convert
13 would enhance or diminish the beneficial interest of the
14 trustee, or if possession or exercise of the conversion power
15 by a particular trustee would alone cause any individual to be
16 treated as owner of a part of the trust for income tax purposes
17 or cause a part of the trust to be included in the gross estate
18 of any individual for estate tax purposes, then that particular
19 trustee may not participate as a trustee in the exercise of the
20 conversion power; however:

21 (1) the trustee may petition the court under
22 subdivision (c)(1) to order conversion in accordance with
23 this Section; and

24 (2) if the trustee has one or more co-trustees to whom
25 this subsection (i) does not apply, the co-trustee or
26 co-trustees may convert the trust to a total return trust

1 in accordance with this Section.

2 (j) Releases. A trustee may irrevocably release the power
3 granted by this Section if the trustee reasonably believes the
4 release is in the best interests of the trust and its
5 beneficiaries. The release may be personal to the releasing
6 trustee or may apply generally to some or all subsequent
7 trustees, and the release may be for any specified period,
8 including a period measured by the life of an individual.

9 (k) Remedies. A trustee who reasonably and in good faith
10 takes or omits to take any action under this Section is not
11 liable to any person interested in the trust. If a trustee
12 reasonably and in good faith takes or omits to take any action
13 under this Section and a person interested in the trust opposes
14 the act or omission, the person's exclusive remedy is to obtain
15 an order of the court directing the trustee to convert the
16 trust to a total return trust, to reconvert from a total return
17 trust, to change the distribution percentage, or to order any
18 administrative procedures the court determines necessary or
19 helpful for the proper functioning of the trust. An act or
20 omission by a trustee under this Section is presumed taken or
21 omitted reasonably and in good faith unless it is determined by
22 the court to have been an abuse of discretion. Any claim by any
23 person interested in the trust that an act or omission by a
24 trustee under this Section was an abuse of discretion is barred
25 if not asserted in a proceeding commenced by or on behalf of
26 the person within 2 years after the trustee has sent to the

1 person or the person's personal representative a notice or
2 report in writing sufficiently disclosing facts fundamental to
3 the claim such that the person knew or reasonably should have
4 known of the claim. The preceding sentence shall not apply to a
5 person who was under a legal disability at the time the notice
6 or report was sent and who then had no personal representative.
7 For purposes of this subsection (k), a personal representative
8 refers to a court appointed guardian or conservator of the
9 estate of a person.

10 (1) Application. This Section is available to trusts in
11 existence on the effective date of this amendatory Act of the
12 92nd General Assembly or created after that date. This Section
13 shall be construed as pertaining to the administration of a
14 trust and shall be available to any trust that is administered
15 in Illinois under Illinois law or that is governed by Illinois
16 law with respect to the meaning and effect of its terms unless:

17 (1) the trust is a trust described in Internal Revenue
18 Code Section 642(c)(5), 664(d), 2702(a)(3), or 2702(b); or

19 (2) the governing instrument expressly prohibits use
20 of this Section by specific reference to this Section. A
21 provision in the governing instrument in the form: "Neither
22 the provisions of Section 5.3 of the Trusts and Trustees
23 Act nor any corresponding provision of future law may be
24 used in the administration of this trust" or a similar
25 provision demonstrating that intent is sufficient to
26 preclude the use of this Section.

1 (m) Application to express trusts.

2 (1) This subsection (m) does not apply to a charitable
3 remainder unitrust as defined by Section 664(d), Internal
4 Revenue Code of 1986 (26 U.S.C. Section 664), as amended.

5 (2) In this subsection (m):

6 (A) "Unitrust" means a trust the terms of which
7 require distribution of a unitrust amount, without
8 regard to whether the trust has been converted to a
9 total return trust in accordance with this Section or
10 whether the trust is established by express terms of
11 the governing instrument.

12 (B) "Unitrust amount" means an amount equal to a
13 percentage of a trust's assets that may or must be
14 distributed to one or more beneficiaries annually in
15 accordance with the terms of the trust. The unitrust
16 amount may be determined by reference to the net fair
17 market value of the trust's assets as of a particular
18 date or as an average determined on a multiple year
19 basis.

20 (3) A unitrust changes the definition of income by
21 substituting the unitrust amount for net trust accounting
22 income as the method of determining current return and
23 shall be given effect notwithstanding any contrary
24 provision of the Principal and Income Act. By way of
25 example and not limitation, a unitrust amount determined by
26 a percentage of not less than 3% nor greater than 5% is

1 conclusively presumed a reasonable current return that
2 fairly apportions the total return of a unitrust.

3 (4) The allocations provision of subdivision (2) of
4 subsection (f) of Section 5.3 applies to a unitrust except
5 to the extent its governing instrument expressly provides
6 otherwise.

7 (Source: P.A. 92-838, eff. 8-22-02; 93-991, eff. 8-23-04.)

8 (760 ILCS 5/16.1)

9 Sec. 16.1. Virtual representation.

10 (a) Representation by person having substantially
11 identical interest; contingent remainder beneficiaries

12 (1) To the extent there is no conflict of interest
13 between the representative and the person represented, a
14 minor, disabled, or unborn person, or a person whose
15 identity or location is unknown and not reasonably
16 ascertainable, may be represented by and bound by another
17 individual having a substantially identical interest with
18 respect to the particular question or dispute; provided,
19 however, that such person is not otherwise represented by a
20 court appointed guardian as provided in the next sentence.
21 If a person is represented by a court appointed guardian of
22 the estate or, if none, by a court appointed guardian of
23 the person, the actions of such guardian shall represent
24 and bind that person for purposes of this subsection
25 (a)(1).

1 (2) If all primary beneficiaries of a trust either are
2 adults and not disabled, or have representatives in
3 accordance with subsection (a)(1) who are adults and not
4 disabled, the actions of such primary beneficiaries, or
5 their respective representatives, shall represent and bind
6 all other persons who have a successor, contingent, future,
7 or other interest in the trust and who would become primary
8 beneficiaries only by reason of surviving a primary
9 beneficiary.

10 For purposes of this Section, "primary beneficiary"
11 means a beneficiary who is either: (i) currently eligible
12 to receive income or principal from the trust or (ii)
13 assuming nonexercise of all powers of appointment, will be
14 eligible to receive a distribution of principal from the
15 trust if the beneficiary survives to the final date of
16 distribution with respect to the beneficiary's share.

17 (3) If all presumptive remainder beneficiaries either
18 are adults and not disabled, or have representatives in
19 accordance with subsection (a)(1) who are adults and not
20 disabled, the actions of such presumptive remainder
21 beneficiaries, or their respective representatives, shall
22 represent and bind all other beneficiaries who have a
23 successor, contingent, or other future interest in the
24 trust. For purposes of this Section, "presumptive
25 remainder beneficiaries" means, as of the date of
26 determination and assuming nonexercise of all powers of

1 appointment, all beneficiaries who either (A) would be
2 eligible to receive a distribution of income or principal
3 if the trust terminated on that date, or (B) would be
4 eligible to receive a distribution of income or principal
5 if the interests of all beneficiaries currently eligible to
6 receive income or principal from the trust ended without
7 causing the trust to terminate.

8 (4) The consent of a person who may represent and bind
9 another person in accordance with this Section is binding
10 on the person represented, and notice to a person who may
11 represent and bind another person in accordance with this
12 Section has the same effect as if notice were given
13 directly to the other person.

14 (b) Total return trusts. This Section shall apply to enable
15 conversion to a total return trust by agreement in accordance
16 with subsection 5.3(b) of the total return trust provisions of
17 Section 5.3 of this Act, whether such agreement is made between
18 the trustee and (A) all primary beneficiaries, either
19 individually or by their respective representatives in
20 accordance with subsection (a)(1), or (B) all beneficiaries
21 currently eligible to receive income or principal from the
22 trust and all beneficiaries who are presumptive remaindermen of
23 the trust, in each case either individually or by their
24 respective representatives in accordance with subsection
25 (a)(1).

26 (c) Representation of charity. If a trust provides a

1 beneficial interest or expectancy for one or more charities or
2 charitable purposes that are not specifically named or
3 otherwise represented (the "charitable interest"), the
4 Illinois Attorney General may, in accordance with this Section,
5 represent, bind, and act on behalf of the charitable interest
6 with respect to any particular question or dispute, including
7 without limitation representing the charitable interest in a
8 nonjudicial settlement agreement or in an agreement to convert
9 a trust to a total return trust in accordance with subsection
10 5.3(b) of the total return trust provisions of Section 5.3 of
11 this Act. This subsection (c) shall be construed as being
12 declarative of existing law and not as a new enactment.

13 (d) Nonjudicial settlement agreements.

14 (1) For purposes of this Section, "interested persons"
15 means the trustee and all other persons and parties in
16 interest whose consent or joinder would be required in
17 order to achieve a binding settlement were the settlement
18 to be approved by the court.

19 (2) Except as otherwise provided in subsection (d)(3),
20 interested persons, or their respective representatives
21 determined after giving effect to the preceding provisions
22 of this Section, may enter into a binding nonjudicial
23 settlement agreement with respect to any matter involving a
24 trust.

25 (3) A nonjudicial settlement agreement is valid only to
26 the extent its terms and conditions could be properly

1 approved under applicable law by a court of competent
2 jurisdiction.

3 (4) Matters that may be resolved by a nonjudicial
4 settlement agreement include but are not limited to:

5 (A) interpretation or construction of the terms of
6 the trust;

7 (B) approval of a trustee's report or accounting;

8 (C) exercise or nonexercise of any power by a
9 trustee;

10 (D) the grant to a trustee of any necessary or
11 desirable administrative power;

12 (E) questions relating to property or an interest
13 in property held by the trust;

14 (F) resignation or appointment of a trustee;

15 (G) determination of a trustee's compensation;

16 (H) transfer of a trust's principal place of
17 administration;

18 (I) liability or indemnification of a trustee for
19 an action relating to the trust;

20 (J) resolution of disputes or issues related to
21 administration, investment, distribution or other
22 matters;

23 (K) modification of terms of the trust pertaining
24 to administration of the trust; and

25 (L) termination of the trust, provided that court
26 approval of such termination must be obtained in

1 accordance with subsection (d)(5), and the court must
2 conclude continuance of the trust is not necessary to
3 achieve any material purpose of the trust; upon such
4 termination the court may order the trust property
5 distributed as agreed by the parties to the agreement
6 or otherwise as the court determines equitable
7 consistent with the purposes of the trust.

8 (5) Any interested person may request the court to
9 approve any part or all of a nonjudicial settlement
10 agreement, including whether any representation is
11 adequate and without conflict of interest, provided that
12 the petition for such approval must be filed before or
13 within 60 days after the effective date of the agreement.

14 (6) An agreement entered into in accordance with this
15 Section shall be final and binding on the trustee and all
16 beneficiaries of the trust, both current and future, as if
17 ordered by a court with competent jurisdiction over all
18 parties in interest.

19 (7) In the trustee's sole discretion, the trustee may,
20 but is not required to, obtain and rely upon opinion of
21 counsel on any matter relevant to this Section, including
22 that any agreement proposed to be made in accordance with
23 this Section could be properly approved by the court under
24 applicable law, or that there is no conflict of interest
25 between a representative and the person represented or
26 among those being represented with respect to a particular

1 question or dispute.

2 (e) Application. On and after its effective date, this
3 Section applies to all existing and future trusts, judicial
4 proceedings, or agreements entered into in accordance with this
5 Section on or after the effective date.

6 ~~(a) If all primary beneficiaries of a trust are adults and~~
7 ~~not incapacitated, except as provided in subsection (c), any~~
8 ~~written agreement; including, without limitation, an agreement~~
9 ~~construing any provision of the trust or an agreement regarding~~
10 ~~any duty, power, responsibility, or action of the trustee,~~
11 ~~between a trustee and all of the primary beneficiaries of a~~
12 ~~trust shall be final and binding on the trustee and all~~
13 ~~beneficiaries of the trust, both current and future, as if~~
14 ~~ordered by a court with competent jurisdiction over all parties~~
15 ~~in interest, if all other persons who have a contingent,~~
16 ~~future, or other interest in the trust would become primary~~
17 ~~beneficiaries only by reason of surviving a primary~~
18 ~~beneficiary.~~

19 ~~(b) For purposes of this Section, "primary beneficiary"~~
20 ~~means a beneficiary who is either: (1) currently entitled or~~
21 ~~eligible to receive any portion of the trust income or~~
22 ~~principal, or (2) assuming nonexercise of all powers of~~
23 ~~appointment, will receive, or be entitled to withdraw, all or a~~
24 ~~portion of the principal of the trust, if the beneficiary~~
25 ~~survives to the final date of distribution with respect to the~~
26 ~~beneficiary's share.~~

1 ~~(e) This Section shall not apply to an agreement that~~
2 ~~accelerates the termination of a trust, in whole or in part.~~

3 ~~(d) In the trustee's sole discretion, the trustee may~~
4 ~~obtain opinion of counsel that any agreement proposed to be~~
5 ~~made under this Section is not clearly contrary to the express~~
6 ~~terms of the trust instrument. The trustee may, but is not~~
7 ~~required to, enter into an agreement under this Section. On and~~
8 ~~after its effective date, this Section applies to all existing~~
9 ~~and future trusts, but only as to agreements entered into on or~~
10 ~~after the effective date.~~

11 (Source: P.A. 88-367.)